

M/s. Neil Extrulamipack Pvt. Ltd. & Ors. v. Pegasus Asset Reconstruction Pvt. Ltd. & Anr.

M/s. Neil Extrulamipack Pvt. Ltd. & Ors.

...Appellant

Pegasus Asset Reconstruction Pvt. Ltd. & Anr.

...Respondent

Case No: Misc. Appeal No. 06/2022

Date of Judgement: 23/06/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Ms. Sonali Jain, Advocate.

For Respondent: Mr. Rishab Shah along with Ms. Shweta Tingle, i/b M/s. Fortis India Law, Mr. Robin J., i/b J. D'silva, Advocate.

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Facts:

The case involves an Interim Application (I.A.) No. 10/2022 (WoD) filed in Misc. Appeal No. 06/2022 by M/s. Neil Extrulamipack Pvt. Ltd. & Ors. (the Appellants) against Pegasus Asset Reconstruction Pvt. Ltd. & Anr. (Respondents). The Appellants are challenging the order of dismissal of S.A. No. 446/2018 on the files of the Debts Recovery Tribunal – II, Mumbai (DRT), wherein their challenges raised under Section 17 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) were declined by the Ld. Presiding Officer vide order dated 04.12.2018. The

present application is for the waiver of the deposit required under Section 18(1) of the SARFAESI Act. The Appellants state that they have a strong prima facie case and are under financial strain, requesting that the mandatory pre-deposit be reduced to a minimum of 25% of the amount due. The Appellants had earlier filed another S.A. No. 204/2018, challenging the SARFAESI measures until the auction sale of the secured assets took place. However, during the interim period, the sale occurred due to the absence of prohibitory orders. The Appellants subsequently amended S.A. No. 204/2018 to incorporate their challenge to the sale of the property. The Appellants then filed another Interlocutory Application (I.A. No. 917/2018) seeking to redeem the property under Section 13(8) of the SARFAESI Act, which was allowed by the Ld. Presiding Officer with a condition to redeem the property within 30 days; otherwise, the sale in favor of the 2nd Respondent would be confirmed, and the sale certificate would be issued. The Appellants did not redeem the property by depositing the entire amount, leading to the confirmation of the sale in favor of the 2nd Respondent, the issuance of the sale certificate, and the 2nd Respondent taking possession of the property. The old bungalow on the property was demolished, and a new structure was almost completed. The Appellants now seek to challenge the SARFAESI measures, including the issuance of the notice under Section 13(2) on 05.04.2017, demanding payment of ₹5,71,22,063/-, and the consequential measures under Sections 13(4) and 14. The order of the Chief Metropolitan Magistrate (CMM) under Section 14 of the SARFAESI Act dated 08.02.2018 is also challenged in the present S.A. No. 446/2018.

Arguments by the Appellants:

The Appellants contended that the property was undervalued, and the adjoining property situated in Juhu was sold for a much higher price, vitiating the sale. They argued that the land on which the bungalow stands was never mortgaged. The Appellants further contended that the loan facility was given under two heads, and only one was a secured loan. The SARFAESI measures were initiated for both loans together, which was improper. Additionally, the 1st Appellant, a company manufacturing plastic disposable items, met with a fire accident on

11.07.2015, completely gutting the factory and halting their source of income. The Appellants Nos. 2 and 3 produced their income tax returns to indicate their meager income and inability to deposit the mandatory amount contemplated under Section 18(1) of the SARFAESI Act.

Arguments by the Respondent Bank:

The Ld. Counsel for the Respondent Bank submitted that the property was sold for a sale consideration of ₹13.38 crores after wiping out the entire debt due from the Appellants under the two facilities and adjusting the amount towards the third facility, for which no steps were taken yet. An amount of ₹5 crores was lying in deposit with a bank, which the Appellants were free to withdraw but had not yet done so. Since the sale was challenged, the sale consideration received could not be accounted for, and the present outstanding amount due from the Appellants was approximately ₹12.6 crores. The Ld. Counsel submitted that the Appellants may be directed to deposit 50% of that amount for entertaining the appeal.

Arguments by the 2nd Respondent:

The Ld. Counsel for the 2nd Respondent submitted that hard-earned money had been spent after purchasing the property in 2018, and the structure was almost completed. The Appellants' intention was now to frustrate the 2nd Respondent from selling the apartments and put them into difficulty, indicating a lack of bona fide in the appeal. It was pointed out that the appeal was filed nearly two years ago, and the defects pointed out by the Registry were never cured for the last two years. The application for waiver was also filed by the end of the second year, suggesting malafide intentions.

Court's Elaborate Opinions:

The court did not find any prima facie case in favor of the Appellants because they had themselves filed an application in the earlier S.A. No. 204/2018, seeking redemption and giving up their entire challenge to the SARFAESI measures. The Appellants had agreed to deposit the amount within 30 days but failed to do so, and the order of disposal of S.A. No. 204/2018 was not challenged in appeal. The contention of

undervaluation of the property was also raised by the Appellants in S.A. No. 204/2018. Under these circumstances, the court found that the Ld. Presiding Officer was justified in finding that the Appellants were estopped from raising those contentions again. The court found no reason to exercise its discretion under the third proviso to Section 18(1) of the SARFAESI Act. However, the appeal should not be dismissed at the threshold without affording an opportunity for the Appellants to be heard.

Sections and Laws Referred:

Section 17 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act): Under which the Appellants raised challenges in S.A. No. 446/2018. Section 13(2) of the SARFAESI Act: Under which the notice demanding payment of ₹5,71,22,063/- was issued on 05.04.2017. Section 13(4) of the SARFAESI Act: Referring to the consequential measures initiated by the Bank. Section 14 of the SARFAESI Act: Referring to the order of the Chief Metropolitan Magistrate (CMM) dated 08.02.2018, which was challenged. Section 13(8) of the SARFAESI Act: Under which the Appellants filed I.A. No. 917/2018 seeking to redeem the property. Section 18(1) of the SARFAESI Act: Regarding the mandatory pre-deposit for which the Appellants sought a waiver or reduction.

Cases Cited:

No cases were cited in the summary.

Court's Decision:

The court directed the Appellants to deposit a sum of ₹5 crores as a pre-deposit in two equal installments of ₹2.5 crores each. The first installment was to be paid on or before 21.07.2023, and the second installment was to be paid on or before 04.08.2023. In default, the Appeal would stand dismissed without any further reference to the Tribunal. The amount was to be deposited in the form of a Demand Draft with the Registrar of the Tribunal and invested in term deposits in the name of the Registrar, DRAT, Mumbai, with any nationalized bank, initially for 13 months and thereafter to be renewed periodically.

With these observations, the I.A. was disposed of, and the Respondent was given liberty to file a reply in the Appeal with an advance copy to the other side. The matter was posted on 24.07.2023 for reporting compliance regarding the payment of the first installment.